

WILLIAM R. SMITH

IBLA 81-746

Decided October 29, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. OR 05342-A.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: William R. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of December 13, 1957, the Oregon State Office, Bureau of Land Management (BLM), accepted a verified statement from Donald R. Hepler claiming rights contrary to section 4, Act of July 23, 1955, 30 U.S.C. § 612 (1976), in the Midget placer mining claim, Oregon 05342-A.

By decision of March 12, 1981, BLM declared the Midget placer mining claim abandoned and void because the claim had not been timely recorded as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR Subpart 3833. The decision was never served on Donald Hepler as the post office for his address of record had been closed in 1975, the forwarding time to a subsequent address had expired, and no current address could be ascertained.

Information from the Roseburg District Office indicated there were two Midget placer mining claims: one located December 30, 1918, by J. J. Campbell and G. W. Lynn and recorded at Book 9, page 383, of the mining records of Douglas County; the other located March 27, 1933, by Paul Parazoo and recorded at Book 10, page 460. The claims were for approximately the same land.

A recordation pursuant to FLPMA was made by William R. Smith for the Midget placer mining claim located by Campbell and Lynn, under serial identification OR MC 09181, in November 1978. Subsequent proofs of labor have been timely recorded with BLM. The case record does not disclose the chain of title from Campbell and Lynn to Smith. Indeed, Smith's title to the Midget placer mining claim appears to derive from one Frank M. Hepler by a quitclaim deed executed January 31, 1973. It is noted that the Midget placer mining claim located by Parazoo was sold to Donald, Lee, and George Hepler in 1939.

By decision of May 21, 1981, BLM expunged the Midget placer mining claim located by Paul Parazoo from its final decision of June 12, 1961, closing the proceeding under section 5, Act of July 23, 1955, 30 U.S.C. § 613 (1976), because that Midget placer mining claim had been declared abandoned and void pursuant to FLPMA.

Copies of the several decisions were sent to William R. Smith, who has appealed. Smith asserts that the Midget placer mining claim to which he has title is the claim located by Paul Parazoo in 1939, and that his recording under OR MC 09181 was that claim.

Examination of the file for OR MC 09181 discloses that the copy of the location notice for the Midget placer mining claim submitted by Smith is that of the Midget placer mining claim located by Campbell and Lynn in 1918. The proofs of labor subsequently recorded by Smith refer to the Midget placer mining claim recorded in Book 9 at page 383, Douglas County, Oregon, which is the place of recording of the Campbell-Lynn mining location. The record does not establish that the claim located in 1933 and declared abandoned and void for failure to record under section 314 of FLPMA is an amended location of the claim located in 1918 and filed for record with BLM by appellant. See Gary Willis, 56 IBLA 217 (1981).

The record supports the BLM decision that only the Midget placer mining claim located by Campbell and Lynn in 1918 has been properly recorded pursuant to FLPMA.

[1] The failure to file the instruments required by FLPMA and the implementing regulations in 43 CFR 3833.1 and 3833.2 in the proper office of BLM within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. Philip Brandl, 54 IBLA 343 (1981); George H. Willis, 54 IBLA 239 (1981). This decision, of course, in no way affects the validity of the 1918 claim which was properly recorded.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

James L. Burski
Administrative Judge

